

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

1/11/01

Hearing:
September 20, 2000

Paper No. 13
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Raj & Raj Realty, Ltd.

Serial No. 75/586,706

Chris J. Coschignano, P.C. and Eric P. Milgrim, Esq. for
Raj & Raj Realty, Ltd.

Steven Berk, Trademark Examining Attorney, Law Office 102
(Thomas Shaw, Managing Attorney).

Before Hohein, Hairston and Holtzman, Administrative
Trademark Judges.¹

Opinion by Hairston, Administrative Trademark Judge:

Raj & Raj Realty, Ltd. has filed an application to
register the mark shown below,

¹ Judge Holtzman has been substituted for Judge McLeod who is no longer with the U.S. Patent and Trademark Office. See In re Bose Corp., 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985).

for restaurant services.²

Registration has been finally refused by the Trademark Examining Attorney under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with the identified services, so resembles each of the following marks, which are registered to the same entity, as to be likely to cause confusion, mistake or deception:

SINGLETON for "fresh and frozen fish and shellfish";³

SINGLETON SUPREME for "frozen shellfish";⁴
and the mark shown below

for "fresh and frozen seafood".⁵

Applicant has appealed. Briefs have been filed and an oral hearing was held before the Board.

² Serial No. 75/586,706, filed November 12, 1998, which alleges dates of first use of January 15, 1998.

³ Registration No. 1,222,770 issued January 4, 1983; combined Section 8 & 15 affidavit filed.

⁴ Registration No. 1,190,854 issued February 23, 1982; combined Section 8 & 15 affidavit filed.

⁵ Registration No. 1,202,907 issued July 27, 1982; combined Section 8 & 15 affidavit filed.

Applicant, in urging reversal of the refusal to register, contends that when the marks are viewed in their entireties, its mark is different from each of the cited marks; and that its restaurant services and registrant's seafood are not related because its restaurants do not specialize in seafood, but instead feature "American cuisine" with some seafood on the menu. Also, applicant maintains that there have been no instances of actual confusion.

The Examining Attorney, on the other hand, argues that applicant's mark and each of the cited marks are very similar because of the shared presence of the term "SINGLETON(S)." Further, the Examining Attorney contends that applicant's restaurant services and registrant's seafood are related because seafood and restaurant services are commonly marketed by a single entity under a single mark. Also, the Examining Attorney notes that applicant serves seafood in its restaurants.

Our determination under Section 2(d) of the Trademark Act is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key

considerations are the similarities between the marks and the similarities between the goods and/or services.

We note, at the outset, that there is no *per se* rule which requires a finding that confusion is likely whenever food items and restaurant services are sold under similar marks. See, e.g., *Jacobs v. International Multifoods Corp.*, 668 F.2d 1234, 212 USPQ 641 (CCPA 1982) [no likelihood of confusion between BOSTON TEA PARTY for tea and BOSTON SEA PARTY for restaurant services; "a party must show something more than that similar or even identical marks are used for food products and for restaurant services"]; and *In re Central Soya Company, Inc.*, 220 USPQ 914 (TTAB 1984) [no likelihood of confusion between POSADA (stylized) for Mexican style prepared frozen enchiladas and LA POSADA for lodging and restaurant services].

Turning first to the marks, although there are similarities between them due to the shared presence of the term "SINGLETON(S)," we find that there are specific differences between applicant's mark and each of the cited marks. In particular, the plural "SINGLETONS," the inclusion of the initials "H" and "R," and the prominent design feature in applicant's mark [which includes HSR in large letters] results in a mark that, when considered in its entirety, is different in appearance from SINGLETON,

SINGLETON SUPREME and CLARA SINGLETON and the design of a boat.

Moreover, as to the respective services and goods, we are not persuaded, on this record, that restaurant services and seafood are related. In support of his contention that such goods and services are related, the Examining Attorney submitted five third-party registrations of marks which cover "fish", on the one hand, and "restaurant services," on the other hand. However, there are several problems with the registrations. One of the registrations issued under Section 44(e) of the Trademark Act, rather than on the basis of use in commerce, and two of the registrations are clearly house marks and cover a variety of food items and other unrelated products/services. In short, these registrations do not satisfy the "something more" evidence requirement set forth by the Court in *Jacobs v. International Multifoods Corp.*, supra at 643 [of 212 USPQ]. While the Examining Attorney has relied on *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999), in support of his contention that restaurant services and seafood are related, we believe that case is distinguishable from the facts herein. In that case, the Board found a likelihood of confusion between the applicant's restaurant services rendered under the mark

AZTECA MEXICAN RESTAURANT and the registrant's Mexican food products sold under the mark AZTECA. Not only were the marks in In re Azteca substantially similar, but the record therein consisted of ten use-based third-party registrations of marks which were registered for restaurant services, on the one hand, and food items, on the other hand. In addition, five of the registrations covered both restaurant services and Mexican food items.

In sum, when we consider the specific differences in applicant's mark and the cited marks with the fact that this record lacks the "something more" necessary to establish that restaurant services and seafood are related, it is our view that applicant's use of the mark HSR HR SINGLETONS and design is not likely to cause confusion with the marks SINGLETON, SINGLETON SUPREME and CLARA SINGLETON and design.

Decision: The refusal to register is reversed as to each of the cited registrations.